Friend of the Court

a Guide to Custody, Parenting Time and Support

Dear Friend,

Welcome to Michigan's Friend of the Court, a part of the circuit court family division supervised by the chief judge. The Friend of the Court assists the court administrator on issues of custody, parenting time and support (including medical and spousal). Throughout the years, the Friend of the Court office has undergone major legislative reforms in order to strengthen child support and parenting time enforcement.

This booklet describes the basic duties and procedures of the Friend of the Court and should therefore be used only as a guide and not as a substitute to seeking legal advice or contacting your local Friend of the Court when facing issues of custody, parenting time and support.

I hope this information is helpful to you.

Information is accurate at the time of printing and provided in part by:

State Court Administrative Office
Friend of the Court Bureau
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-5975
Website: courts.mi.gov

Table of Contents

Introduction 1

Rights and Responsibilities of the Parties 2

Friend of the Court Duties 3

Procedures of the Court 4

- Starting a Court Case 4
- Hearings 5
- Court Orders 5
- Alternative Dispute Resolution (ADR) 7

Information About Custody, Parenting Time and Support 9

- Custody 9
- Parenting Time 11
- Support 13
- Child Support Questions and Answers 17

Questions Regarding Miscellaneous Issues 18

Complaints 20

Additional Resources 21

Glossary of Frequently Used Terms 22

Prepared by the Michigan Legislature

This information is provided free to Michigan citizens
and is not for reproduction for resale or profit.

(Rev. 8/2013)

PAPER MI MADE · 100% Recycled Paper · ecosmart GREEN INKS · 6

Introduction

This handbook provides information about duties and procedures for the Friend of the Court (FOC), rights and responsibilities of parties in family law matters, and information about basic court procedures in domestic relations cases.

Family law matters can be difficult and painful. The family division of the circuit court is responsible for resolving the legal concerns which affect your family.

Family law matters can be difficult for children. Parents can help by establishing or maintaining children's regular routines, encouraging frequent and regular contact between the children and both parents, being supportive of the other parent's participation in the children's school and other activities, and exchanging information regarding the children's well-being.

Children need both parents. When you cooperate, you reassure your children that change will be positive. You also build the foundation for your new parental relationship and responsibilities. Your children will always want both of you to be part of their lives, to attend their high school or college graduations, to be at their weddings and the birth of their children, and to be part of other major life events. They want to be able to say that, despite what mom and dad may have felt toward one another, they always treated each other with courtesy and respect and never put their children in the middle of their dispute.

We will do our best to handle your case quickly and fairly. Please follow the suggestions in this handbook and you will be well on your way to doing your part.

Rights and Responsibilities of the Parties

Each Party Has the Right to:

- Request a meeting with the Friend of the Court employee investigating a dispute about custody, parenting time or support.
- Request the Friend of the Court to recommend whether a support or health insurance order should be modified. (See *Support Modification Actions Started by Parties*, page 16).
- Expect the Friend of the Court to explain its policies and procedures.
- Be treated fairly and courteously by Friend of the Court employees.
- File a grievance with the Friend of the Court office concerning an employee or office procedure.
- Hire and consult with an attorney about any questions or concerns.
- Proceed in the case without Friend of the Court assistance (opt out) if agreed to by the other party and ordered by the court.

Each Party Has the Responsibility to:

- Inform the Friend of the Court, in writing, of the following information:
  - current residential and mailing addresses,
  - current employer or source of income's name, address, and telephone number,
  - current telephone number,
  - any occupational or driver's license held, and the driver's license number,
  - social security number, unless exempt by law from disclosing that number,
  - current residence of children,
  - current information regarding health care coverage available as a benefit of employment or maintained by either party.
- Provide information to assist the Friend of the Court in carrying out its duties as required by law.
- Obey all court orders.
- Keep appointments made with the office, or take the time to cancel or reschedule the appointment.
- Treat Friend of the Court employees fairly and courteously.

Friend of the Court Duties

Michigan law created Friend of the Court offices in 1919. At least one office serves each circuit court's family division.

Friend of the Court offices have the following duties:

- When parents cannot agree, or when directed by the judge, to conduct investigations and make reports and recommendations to the court regarding:
  - ✯ custody,
  - ✯ parenting time (which may include transportation),
  - ✯ amount of child support (including medical support, and sometimes spousal support).
- To offer mediation, when both parents agree to participate, as an optional way of settling disagreements about custody or parenting time.
- To work in cooperation with Michigan State Disbursement Unit (MiSDU) to collect, record, and send out support payments as ordered by the court.
- To provide enforcement services on custody, parenting time, and support orders.

Friend of the Court offices' child support enforcement responsibilities were mainly created pursuant to requirements of the Social Security Act. In Michigan, the child support program is administered by the Office of Child Support in cooperation with Friend of the Court offices. The Office of Child Support is part of the Department of Human Services. It is responsible for administering federal child support program funds, coordinating location of absent parents, and managing the process for income tax intercepts.

Material in this handbook will further describe general duties of the Friend of the Court. Specific procedures are established by local offices and may vary from office to office. Any questions regarding local procedures or requirements outlined in this handbook may be discussed with your local Friend of the Court, or with an attorney.

To become familiar with some legal terms, please refer to the glossary on page 22.

Opt Out

Parties do not have to use the services of the Friend of the Court if they file a motion to "opt out" and the motion is granted by the court. Prior to entry of an order, the parties must file a document that includes a list of Friend of the Court services and a signed acknowledgment that the parties are choosing to do without those services.

The opt out motion must be filed at the same time as the complaint. If timely filed, the court must order the Friend of the Court not to open a case unless one or more of the following are true:

- A party is eligible for IV-D of the Social Security Act, 42 U.S.C. § 301 et seq. (child support services) because a party is receiving or has applied for public assistance.
- A party has applied for IV-D services.
- A party has requested the Friend of the Court to open a case.
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child.

The parties also may file a motion requesting the court to order the Friend of the Court to close its case. The court will issue the order unless it determines one of the following:

- A party objects to the closure.
- A party is receiving public assistance.

- Within the previous 12 months an arrearage or custody or parenting time violation has occurred in the case.
- Within the previous 12 months a party to the case has reopened the Friend of the Court case.
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child.

Closing a Friend of the Court case requires the parties to assume full responsibility for administration and enforcement of the court orders. To assure proper accounting of support payments and their consideration in future proceedings, the parties may choose to have support payments made through the MiSDU even after a Friend of the Court case is closed. A party may reopen a Friend of the Court case by applying for public assistance or requesting services from the Friend of the Court.

Procedures of the Court

Starting a Court Case

Anyone who wants to start a court case must file the correct papers in the family division of the circuit court according to Michigan court rules. The court cannot require a party to use an attorney to start or to respond to a case. Cases sometimes involve many difficult questions, and it may be wise to have an attorney file the correct papers.

Plaintiff's Complaint

Each case begins with the plaintiff (the person requesting the court's assistance) filing papers which ask the court to order something (a complaint) concerning another party (the defendant). Among the things a complaint may ask the court to do are the following:

- Grant a divorce.
- Order child support (including medical support) or spousal support.
- Establish paternity.
- Establish custody of a child with one (or both) parties.
- Establish parenting time with a child.

Service

Michigan court rules state that the defendant must be given a copy of the summons and complaint within the time stated on the summons. The summons tells the defendant to answer the complaint. The summons and complaint must be delivered in a way that gives the defendant notice that a case has been started. A Friend of the Court informational handbook (this handbook or one like it) must be served with the complaint whenever minor children are involved or spousal support is requested.

Defendant's Answer to Complaint

The defendant is allowed time to answer the complaint. If an answer is not filed within the time frame permitted (usually 21 days after service), the defendant may lose the right to have his or her concerns heard by the judge. The plaintiff may seek the entry of a default and default judgment. This could result in an order granting the plaintiff's requests.

Hearings

After the complaint and answer have been filed, either party or the Friend of the Court may file a motion asking for orders deciding custody, parenting time and child support. The court gathers necessary information at a hearing to decide what should be ordered.

If a hearing is scheduled before a referee or judge, both parties must be notified of the time and place. This provides a parent with an opportunity to tell the judge or referee why a specific order should be made.

Court Orders

When a court makes a decision, someone must write it in the form of an order. This is usually done by the parties or their attorneys, but sometimes is done by the court. An order is not valid until a judge signs it and it is filed with the county clerk. A referee can recommend an order, but it is not valid until signed and entered by the judge.

Temporary Orders

The court may enter a temporary order before the parties have had the opportunity to present all important evidence. This often happens in divorce cases before the judgment ending the marriage.

Ex Parte Orders

(Orders Entered Without Both Parties Having to Appear in Court)

Sometimes a judge will immediately enter a custody, parenting time or child support order upon request of one of the parties. This happens when the judge is shown that serious harm will occur if an order is not entered before the other party has the opportunity to respond.

When an ex parte order addresses child support, custody or parenting time, the order must be served on the other party and also include a notice that a written objection or motion may be filed within 14 days. If a party files an objection and the Friend of the Court cannot help the parties settle the dispute, the Friend of the Court will provide forms and instructions for scheduling a hearing with the court.

If a party disagrees with an ex parte order, that party must file a timely, written objection to the order, or file a motion with the court to change or cancel the order. Even if an objection or motion is filed, the order will continue to be effective unless it is changed by the court.

Final Orders

After a motion has been fully considered, the court enters a final order. A final order ends activity on the motion, establishing requirements that the parties must follow.

Some final orders can be modified in the best interests of the children or upon a showing of extraordinary circumstances such as fraud. These include orders deciding custody, parenting time, financial support of children and domicile.

A change can occur only if it is ordered by the court. Normally, a court will order a change if both parties have agreed to the change and signed an agreement (consent agreement). Otherwise, the court will only order a change if a motion is filed and a court hearing is held.

Parties' agreements are only recognized by the court and the Friend of the Court when they are entered as an order of the court. Simply notifying a Friend of the Court employee or a Department of Human Services worker of an agreement does not change the court order.

Sometimes, the Friend of the Court has an obligation to ask the court to change an order. (See *Parenting Time Enforcement* on page 11 and *Modification of a Support Order* on page 16.)

Referees

A referee is a person who holds hearings, examines witnesses and makes recommendations to a judge. The chief judge of a circuit court may appoint a referee to hear any domestic relations issue, except an increase or decrease in spousal support.

A referee hearing is different than a hearing before a judge. The findings of a referee are only recommendations to the judge for an order. A referee's recommendation will become a court order only if neither party files an objection within specific time limits (or the court holds a hearing pursuant to an objection) and the judge signs an order containing the recommendation.

A party who disagrees with a referee's recommendation may request a new (de novo) hearing before the judge. The objection to the referee's recommendation, and a request for hearing, must be made in writing and filed with the circuit court clerk within 21 days from the time the recommendation is mailed or hand delivered. Pending the de novo hearing, the referee's recommended order may be presented to the court for entry as an interim order as provided by Michigan court rules.

Contact an attorney for an explanation of how an objection and request for hearing should be filed. Some Friend of the Court offices also have information concerning how an objection may be filed.

Reconciliations and Dismissals

Not every case ends with separated parents. If parties are trying to work out their differences and wish to have enforcement of their order stopped, they may file a motion asking the court not to enforce the order. Enforcement of a support obligation cannot be stopped except by court order.

If parties wish to stop all further actions on a case, they must file an order of dismissal with the court, and provide a copy to the Friend of the Court. The support payer must pay any past due support owed to the State of Michigan (which occurs when support is not paid while the custodial parent is receiving Temporary Assistance for Needy Families (TANF)), and any amounts owed to the court or the county.

Orders Where One of the Parents Leaves Michigan

Child support continues regardless of where you live, unless changed by a court order. There are serious legal consequences if orders are not followed.

Child support does not end when a parent leaves Michigan, even if the child lives in a different state from the support payer. Both parents must tell the Friend of the Court whenever they change where they live or work. The payer must continue to pay support through the Friend of the Court (or Michigan State Disbursement Unit (MiSDU), when appropriate) and the Friend of the Court continues to be responsible for enforcing the court order.

If a support payer leaves Michigan and support payments are not timely, or stop altogether, there are laws to assure that payments are made. Each state now has a law called the "Uniform Interstate Family Support Act (UIFSA)."

UIFSA assists states in dealing with cases where a party or source of income is in another state. It replaces other interstate child support laws. Under UIFSA, only one state has the right to establish or modify support. This right can be given to another state only if certain conditions are met.

Some of the procedures available under UIFSA include interstate income withholding, registration of the order in the other state for enforcement, registration of the order in the other state for modification, and a request to have the other state assist with discovery. For more information, see "*The Uniform Interstate Family Support Act* (UIFSA)" (Public Service Announcement (PSA) 29).

Alternative Dispute Resolution (ADR)

If you are a party to an action and have a dispute that you cannot resolve with the other party or parties, you are encouraged to participate in alternative dispute resolution (ADR) outside of the court system. ADR may involve parents, grandparents, and even third parties. Sometimes judges will order the parties to attempt ADR.

Mediation is a common type of ADR. When parties go to court, decisions affecting their family are made by the judge. The judge must decide based upon all available evidence and according to law. Mediation places the responsibility for settling issues upon parties, without the direct involvement of the court. Mediation provides parents the opportunity to communicate, cooperate, and, with the assistance of a neutral third party, resolve disputes regarding custody or parenting time. Parties often find this rewarding, because they make the decisions instead of the court.

The following are types of alternative dispute resolution available in domestic relations proceedings. You may contact an attorney or the Friend of the Court office to determine the types of alternative dispute resolution methods available in your area.

Friend of the Court Domestic Relations Mediation

The Friend of the Court is required to provide formal mediation services for disputes regarding custody or parenting time. These services can be provided by a Friend of the Court employee, or the Friend of the Court may contract to have a private mediator provide the services. The Friend of the Court may also provide informal mediation services. There is typically no cost for Friend of the Court mediation.

Friend of the Court domestic relations mediation of custody or parenting time is voluntary; both parties must be willing to participate. If you reach an agreement, the mediator can put it into writing. You may review this agreement with your attorneys. If both parties agree, the agreement will be put in the form of a court order and signed by the judge.

Matters discussed during a formal mediation are confidential. A Friend of the Court employee who acts as a mediator in a case cannot share information about what happened during mediation, except for what is in the signed agreement of the parties. In addition, a Friend of the Court employee who acts as a mediator in a case cannot enforce, investigate, or serve as a referee regarding any issues of that case.

Court Rule Domestic Relations Mediation

The court may refer family matters to mediation under the Michigan Court Rules (MCR 3.216). This may occur when the parties agree to mediation, upon written motion of one of the parties, or upon the direction of the court.

For mediation under the court rule, the parties may agree to have any person mediate. If they do agree to a mediator, the mediator must be a person who qualifies under the court rule.

Parties must attend the mediation sessions and may be accompanied by their attorneys. Any information shared with the mediator is considered privileged and the mediator may not disclose this information during any future proceedings or at trial.

If an agreement is reached during mediation, that agreement must be put in writing and signed by the parties and their attorneys. The parties must take the necessary steps to have the mediation agreement entered as an order of the court.

If an agreement is not reached during mediation and the parties have requested evaluative mediation (a special type of mediation), then the mediator must prepare a report to the parties setting forth the mediator's recommendations on the issues. If both parties accept the mediator's recommendation, the parties must take the necessary steps to have the recommendation entered as a court order.

If either party rejects the mediator's recommendation, even in part, the case will go to trial. The court may not consider the mediator's recommendation at trial.

An individual who performs court rule domestic relations mediation is entitled to reasonable fees, which are usually divided equally between the parties.

Arbitration

In some circuits, parties who have a dispute may participate in arbitration. Arbitration (also known as binding mediation) may be conducted by an individual or a panel. The arbitrator(s) will consider the parties' issues and may consider the input of witnesses. If the parties cannot agree on how to resolve those issues, the arbitrator will decide based upon the information available.

Once the arbitrator makes a decision, that decision is binding upon the parties. The court only may vacate (cancel) the decision based upon evidence that the arbitrator was biased, exceeded his or her powers, refused to hear evidence, or was otherwise prejudiced.

If the arbitrator's decision is not vacated, it will be enforced by the court in the same way as any order of the court.

Information About Custody, Parenting Time and Support

Custody

A number of custody arrangements are possible. For any arrangement, the court must decide who will make the major decisions about each child. The court must also decide how the child's time will be shared between the parties.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge must decide by considering factors set forth in the Michigan Child Custody Act. See MCL 722.23. These factors will be considered at a hearing where the parents may produce evidence about each factor.

At the request of either parent, the court must consider ordering joint custody. If the parents agree on joint custody, the court must order it unless the court determines that joint custody is not in the best interests of the child.

When deciding, the court must state on the record its reasons for granting or denying the request. The court may consider joint custody without a parent's request. In addition to the normal factors considered when deciding custody, for joint custody the court must also consider whether the parents will be able to cooperate and generally agree concerning important decisions affecting the child's welfare.

If the court determines that a child's best interests are not adequately represented in the proceedings, the court may appoint a lawyer-guardian ad litem to represent the child. The court may require the parties to pay the lawyer-guardian ad litem's fees.

Custody Questions and Answers

How do I change an order for custody?

A motion must be filed to change a custody order. If parents agree, they may sign an agreement (stipulation and consent agreement) and obtain the judge's approval. That agreement will then become the new custody order.

Can I file my own motion to change custody?

You may file your own motion. The office of the Friend of the Court will provide forms and instructions to file this type of motion. However, it is important to remember that the court will still hold you to the same rules to which an attorney would be held. There may be many complex issues in a custody case and you may wish to have an attorney represent you. The Friend of the Court office cannot file a motion for you, tell you what to say in a motion, or provide you with an attorney.

Is there any way the Friend of the Court can assist parties in reaching an agreement regarding custody?

The Friend of the Court will provide domestic relations mediation whenever there is a custody dispute and both parties agree to participate in mediation. (See *Alternative Dispute Resolution (ADR)* on page 7.)

After a motion for custody has been filed, and we cannot reach our own agreement, what does the Friend of the Court do?

The Friend of the Court is required to:

- Offer mediation services to the parties; or
- If directed by the judge, conduct an investigation and file a written report and recommendation based upon the factors listed in the Michigan Child Custody Act.

Do I have the right to receive a copy of the Friend of the Court report and recommendation on custody?

Upon request, the Friend of the Court must give each party, or his/her attorney, a copy of the report, recommendation and supporting information (or a summary of the information) used in making the recommendation. This report must be provided before the court takes any action on the recommendation.

What happens if I have an order for custody and the other parent does not return the child to me as stated in the court order?

- You may contact the Friend of the Court and request enforcement.
- You may contact your attorney.
- If you have reason to believe the other parent does not intend to return the child, you may contact the police or the prosecuting attorney and request that parental kidnapping charges be filed.

How do I enforce my custody order if the other parent has taken the child to another country?

When a child of U.S. citizenship is illegally kept outside of the country, the State Department's Office of Children's Issues works with U.S. embassies and foreign authorities to assist the child and custodial parent. If a child custody dispute cannot be settled, it often must be resolved by judicial proceedings in the country where the child is located. The State Department can assist parents in filing the appropriate documents with foreign authorities and monitor and report on foreign judicial or administrative proceedings.

How do I contact the Office of Children's Issues at the Department of State?

United States Department of State
Bureau of Consular Affairs
Office of Children's Issues
CA/OCS/CI
SA-17, 9th Floor
Washington, DC 20522-1709
Phone: (202) 501-4444
Toll-free: (888) 407-4747
www.childabduction.state.gov

Does the Friend of the Court have to investigate alleged abuse or neglect of a child?

No. Allegations of abuse or neglect should be reported to the protective services unit of the Department of Human Services office in the county where the abuse occurred.

The Friend of the Court office has a duty, when ordered by the court, to conduct an investigation when a party files a custody or parenting time motion. Claims of abuse or neglect should be disclosed to the Friend of the Court office, during its investigation, for its use in recommending custody or parenting time.

Can my child enroll in the school district I live in, even though the child lives with the other parent most of the time?

Michigan law provides that a child may enroll in a school district where either parent resides, regardless of which parent has custody. When a child regularly resides in two school districts as a result of a joint custody order, the child may attend school in either district.

Parenting Time (Previously Called Visitation)

A parenting time order states when a parent may be with his or her children. The Michigan Child Custody Act [MCL 722.27a(1)-(3)] states:

> "[Normally,] parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time. If the parents of a child agree on parenting time terms, the court shall order the parenting time terms . . . [unless it is shown] that the parenting time terms are not in the best interests of the child. A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health."

During a person's parenting time, that parent is responsible for all routine decisions affecting the child. The Michigan Child Custody Act (1970 PA 91) lists factors that the judge may consider when determining the frequency, duration and type of parenting time to be granted [MCL 722.27a(6)].

Parenting time guidelines can be found at the Michigan Supreme Court's web page, courts.mi.gov.

Parenting Time Enforcement

The Friend of the Court is required to provide enforcement services for parenting time orders.

The Friend of the Court office normally must initiate enforcement if it receives a written complaint stating specific facts which show a violation of the custody or parenting time order. However, the Friend of the Court office may decline to respond to the alleged violation if (1) it occurred more than 56 days before the complaint is made or (2) the complaining party has made two or more similar complaints found by the court to be unwarranted and has failed to pay costs assessed in those actions.

The Friend of the Court initiates enforcement by sending a copy of the complaint to the accused party within 14 days of when the office receives the complaint. The office must take further action if it determines that the alleged violation can be addressed by statutorily-established actions. By statute, the Friend of the Court may apply a makeup parenting time policy, start an action requiring the party to show cause why the court should not find the party in contempt of its order, file a motion for modification of existing parenting time provisions, schedule mediation, or schedule a joint meeting with the parties.

Parenting Time Modification Actions Started by Parties

A party may file a motion for a change in the parenting time order. The Friend of the Court office will provide forms and instructions to any party who wishes to file this type of motion. A party may also contact an attorney to prepare the forms and file the motion.

If both parents agree to change the parenting time order in a way that benefits their child, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the county clerk, it will become an order of the court.

Parenting Time Questions and Answers

My order for parenting time states I have "reasonable" parenting time (or visitation). What does this mean?

As parents, you have a responsibility to arrange a schedule of parenting time which is reasonable based upon the best interests of each child and your family situation.

If you cannot agree on a "reasonable" schedule of parenting time, you have the following options:

- Ask the other parent to attend mediation with the Friend of the Court.
- Ask the Friend of the Court to file a motion with the court to change your order to require a specific schedule.
- File a motion on your own or contact an attorney.

I have a specific parenting time schedule that I would like to change. What can I do?

- Ask the other parent to agree to the change. If you agree, the change and reasons for it may be presented to the court as a proposed new court order for parenting time. An agreement between parties is not enforceable without a court order.
- The Friend of the Court will provide mediation if both parents agree to participate.
- File a motion with the court for a change in the order. You may file the motion on your own or have an attorney file it for you.

Child support payments are not being made. Do I have to allow parenting time?

Yes. Parenting time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed. (See *Enforcement of Support* on page 14.)

The other parent is not sending or returning clothing or other personal items for our child. Is there anything the Friend of the Court can do?

The Friend of the Court can only enforce the written order of the court. If your court order does not address clothing or other personal items, try to work it out with the other parent. If that is unsuccessful, you may file a motion with the court requesting an order that clothing or other personal items be sent for, or returned after, parenting time.

The other party is not following the parenting time order. What can I do?

File a written complaint with the Friend of the Court.

If the complaint states facts showing violation of the parenting time order, and the complaint can be addressed through statutorily-established procedures, the Friend of the Court will start enforcement action. (See *Parenting Time Enforcement* on page 11.)

It appears that the other parent has been drinking or using drugs. Do I have to let the children go?

That is your decision as a parent. If you violate the court order in such a situation, you may have to explain to the court, at a "show cause" hearing, why you should not be held in contempt for your decision. This will include showing why your decision was in the best interests of the children.

The other parent will not let me telephone my children. What can the Friend of the Court do?

The Friend of the Court can only enforce the written order of the court. If your court order does not provide for telephone calls, try to work it out with the other parent or contact the Friend of the Court for guidance. In addition, you may file a motion with the court to modify your order allowing you to call your children.

I am concerned that my child is being abused when with the other parent. What should I do?

Report your concerns to the protective services unit of the Department of Human Services in the county where you think the abuse occurred. The Friend of the Court office does not have the authority to investigate and remove children in abuse or neglect matters. This is done by protective services through a separate action. **DHS Central Intake Phone: (855) 444-3911 (Statewide).**

My child does not want to spend time with the other parent. What can I do?

Parents are to obey court orders, regardless of the child's age. It is the parent's responsibility to promote a positive relationship with the child and the other parent. You may want to try the following options:

- Work out a different arrangement with the other parent.
- Seek counseling for your child, yourself, or the other parent.
- Contact the Friend of the Court and request mediation.
- File a motion with the court asking for a change in your parenting time order.

The other parent refuses to see our children. What can the Friend of the Court do?

The Friend of the Court cannot force a parent to see his or her children. To promote a positive relationship with the children and the other parent, you may wish to consider counseling, mediation, or filing a motion for change of the parenting time order.

Support

A support order in the form of a Uniform Support Order (USO) is any court order that requires a party to pay:

- Child support.
- Spousal support.
- Payment of medical, dental and other health care.
- Payment of confinement expenses (these are the mother's costs related to the birth).
- Payment of child care expenses.
- Payment of educational expenses.

All support orders must be stated in a monthly amount which is due on the first day of the month. When an order takes effect on a day other than the first day of a month, or ends on a day other than the last day of the month, the support amount must be prorated for the partial month. Support is past due if it is not paid by the last day of the month in which it became due.

Support Investigations and Reports

The Friend of the Court office is required periodically to review child support provisions, including health care, and file a motion for a change in the order if a change is warranted. (See *Modification of a Support Order* on page 16.) When reviewing support, the Friend of the Court office may request information from a parent's employer, including the parent's address, social security number, date of birth, wages earned and dependent health care coverage available as a benefit of employment.

When directed by the judge, the Friend of the Court office will also conduct a financial investigation and make a written report and recommendation to the parents (or their attorneys) and the judge regarding child support. Friend of the Court reports cannot be used as evidence in court without the agreement of both parents.

Child Support Formula

Michigan law requires that the child support formula be used to determine child support amounts. A different amount may be used if the Friend of the Court or the judge state the amount required by the formula and a clear reason in writing or on the record why using the formula is "unjust or inappropriate." For more information about the child support formula, see "*Facts about the Michigan Child Support Formula*" (PSA 24). For more information, visit the Michigan Courts website, courts.mi.gov.

Support Payments

Unless otherwise ordered, support is paid through the Michigan State Disbursement Unit (MiSDU).

When support received by the MiSDU sufficiently identifies to whom the support should be paid, it must be forwarded to the recipient within two business days of receipt.

Support is normally paid through income withholding. If you are paying directly, please include your case number at the time of payment. Do not send cash through the mail.

Once a year, upon written request, the Friend of the Court will provide parties with a free statement of their account. Information regarding a support account is also available online through **MiCase@michigan.gov/micase**.

Statutory Service Fees

Michigan law requires the Friend of the Court to charge the payer of support a fee for all child support cases. The current fee is $42.00 per year ($3.50/month). Federal law requires Friend of the Court to charge the support payer a federal service fee, currently $25.00 per fiscal year.

Surcharge on Overdue Support

Some overdue support cases have surcharges added. This surcharge is fully enforceable as support. Automatic surcharges were eliminated in 2010. However, previously assessed surcharges are not forgiven and are still enforceable. Beginning January 1, 2011 the court may order a surcharge as a sanction for failure to pay support.

Automatic Support Enforcement

The Friend of the Court is required to begin enforcement action when past due support reaches an amount equal to one month of support. This may be done without waiting for a complaint or request for enforcement.

Enforcement of Support

The Friend of the Court has many options available to collect support. They include:

Immediate Income Withholding

Income withholding tells the payer's employer or other source of income to withhold support and send it to the MiSDU. The Friend of the Court may increase the amount to be collected for arrearage, but the Friend of the Court must first send the payer a notice of arrearage at which time the payer has a right to an administrative hearing. The withheld amount cannot exceed 50 percent of the payer's disposable earnings.

Support orders must provide for income withholding. In some limited cases, an order of income withholding will not take effect immediately. To delay income withholding, the court must find that "good cause" exists when all of the following exist:

- The court makes a specific written finding that income withholding is not in the best interests of the child(ren).

- All previously ordered support has been paid on time.
- The payer agrees to keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

OR

- The parties enter into a written agreement that is approved by the court and provides that the order of income withholding will not take effect immediately, but that an alternative payment arrangement has been made. The payer shall keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

Contempt of Court (Show Cause) Hearing

If support is not paid on time, the Friend of the Court or a party may begin a contempt action (known as a "show cause" hearing) by filing papers asking the court to order the payer to appear in court. If you fail to appear for a show cause hearing, the court may issue a bench warrant for your arrest. For more information about show cause proceedings, see "*Show Cause Proceedings in Domestic Relations Cases*" (PSA 25) at courts.mi.gov.

Income Tax Intercept

If the amount of past due support (arrearages) reaches a certain level (threshold), both federal and state tax refunds can be intercepted to pay support.

In such cases, a tax refund due to the payer of support is sent to the Friend of the Court and applied to past due support for minor children. For more information about tax intercepts, see "*Tax Refund Offset Program*" (PSA 13) at courts.mi.gov.

Other Enforcement Remedies

Several other remedies exist:

- Lien/Levy
- License Suspension
- Passport Denial
- National Medical Support Notice
- Pension Accounts
- Surcharges

For more information, visit courts.mi.gov or www.michigan.gov/dhs.

Criminal Non-Payment of Support/Felony Charges

Failure to pay child support is now a criminal offense according to federal and Michigan law. The Friend of the Court does not issue felony charges. Felony charges according to Michigan law are filed and prosecuted by county prosecutors or the Attorney General. Federal charges are prosecuted by the United States Attorney's office.

Child Support Division, Office of the Attorney General

The Child Support Division in the Office of the Attorney General assists in the collection of past due support, with significant arrearages of at least $10,000.

The division focuses on parents who have the ability to pay their court ordered obligation but fail to do so. For more information, contact the Child Support Division at (517) 373-1111.

Health Care Enforcement

One or both parents may be responsible for providing health care coverage for the child(ren). If a parent is required to provide coverage, has coverage available through employment, and fails to provide coverage, the Friend of the Court will send a medical support notice to the parent's employer. The employer then is required to enroll the child(ren) in the employee's health plan and deduct premiums for the coverage.

Not all health care expenses will be paid by a health care plan. Support orders require each parent to pay a percentage of remaining health care expenses. The Friend of the Court will assist in collecting the payments required by the court's order if the costs exceed the limits set in the support order and the parent incurring the cost has done the following:

- Requested payment from the other parent within 28 days of receiving an insurance payment or a determination that the expense is not covered.
- Payment was not made within 28 days of the request to the other party.
- The Friend of the Court's assistance is requested within one year of incurring the expense, within six months of denial of coverage of the expense, or within six months after the other parent fails to pay the expense as agreed.

If the Friend of the Court receives a request for help which meets the requirements, the Friend of the Court must send a copy of the request to the other party, along with notice that, if no objection is filed within 21 days, the amount will become a support arrearage subject to any enforcement process. If an objection is filed, the Friend of the Court must schedule a court hearing to resolve the dispute.

If health insurance is not provided through the support order, coverage might be available through other programs. For more information, contact the **Michigan Department of Community Health at (855) 275-6424 or visit www.michigan.gov/dhs**.

Modification of a Support Order

The Friend of the Court will review child support orders once every 36 months. This review is automatic in public assistance cases. A party who needs an immediate change in support amount should file a court motion requesting the change. **Merely notifying the Friend of the Court of parent's financial situation change, cannot automatically change the ordered support amount.**

Threshold for Modification

A "minimum threshold" establishes when a child support order should be changed. If the difference between the current support amount and the proposed support amount is 10% or $50.00 (monthly), whichever is less, the Friend of the Court will petition the court for a change. If the difference between the current amount and the proposed amount is less than the minimum threshold, the Friend of the Court is not required to petition for a change.

Support Modification Actions Started by Parties

A party may file a motion to change the support order. The office of the Friend of the Court will provide forms and instructions to any party who wishes to file this type of motion without the assistance of an attorney. A party may also contact an attorney to file a motion requesting a change in the amount of support.

If both parents agree to change the support order to the amount shown by the child support formula, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the court clerk, it becomes the new support order.

Retroactive Modification of Support

Once child support is ordered, it generally cannot be changed once it is due and payable. **If your financial situation changes, you should immediately file a motion to change the support amount.** The court may adjust the support amount back to the date that the motion was served on the other party. **Simply notifying the Friend of the Court of a change in either parent's financial situation does not change the court order.**

Michigan law recognizes one exception to the rule that support cannot be retroactively modified. The court may modify support retroactively where a party knowingly and intentionally fails to report, refuses to report, or knowingly misrepresents income that was required by the court to be reported to the Friend of the Court.

Child Support Questions and Answers

How do I get an order for child support?

A motion asking the court to order child support must be filed with the court clerk. If both parties agree to establish support at the amount shown by the formula, they may sign an agreement (stipulation). Once that agreement is put in the form of a Uniform Support Order, signed by the judge, and filed with the court clerk, it will become a support order.

Do I need an attorney to get an order for support?

You are not required to have an attorney to file a motion for support. You may find an attorney's help useful when filing papers and following specific rules.

Can I receive child support after my child reaches age 18?

Unless the support payer agrees, child support can continue past age 18 only if certain conditions are met. Support may continue up to age 19½ if the child "is regularly attending high school on a full-time basis with a reasonable expectation of graduation while residing on a full-time basis with the payee of support."

If I have been paying my child support and the custodial parent is not allowing parenting time, do I have to keep paying support?

Yes. Parenting time and support are separate parts of a court order. Each has enforcement procedures to be used when that part of the order is disobeyed. (See *Parenting Time Enforcement* on page 11.)

The other parent is not paying support as ordered. What can I do?

Contact the Friend of the Court for enforcement help if the other parent is more than one month behind on support payments. You may also contact an attorney to start enforcement proceedings.

My court order states I am to pay support through the Friend of the Court or Michigan State Disbursement Unit. Can I pay the other parent directly?

No, you will not get credit for payments made directly to the other parent.

If I am receiving public assistance, do I still get child support?

The Friend of the Court must send child support payments to the state while you are on public assistance.

Is the Friend of the Court responsible for making sure that child support money is being spent on the children?

No. The law does not give anyone the authority to verify how child support payments are being spent.

Will support be modified if the payer is in jail or prison? (MCL 552.517)

Michigan law requires support to be set according to the child support formula, which considers the parties' incomes. Therefore, an incarcerated payer's support obligation might be modified if a motion to modify support is filed.

The Friend of the Court must review an order within 14 days of learning of a payer's incarceration or release from incarceration. The Friend of the Court will not be able to modify a support order without notice of the change in circumstance.

My license was suspended by the Friend of the Court. How can I have it reinstated?

Upon showing you are in compliance with the court's orders (which may include paying off arrearages or setting up a payment plan), you must get a Compliance Certificate for License Reinstatement from the Friend of the Court, and pay a $45.00 clearance fee at the Secretary of State.

Questions Regarding Miscellaneous Issues

Change of Domicile/Change of Legal Residence

How do I get the court's approval to change the child(ren)'s residence?

Parties may agree to a change of domicile (residence) by signing an agreement (stipulation). Once this agreement is put in the form of an order and signed by the judge, it will become an order of the court.

If you and the other parent cannot agree upon a change of domicile, you may:

- Contact the other parent and see if he or she will agree to mediation; or
- File a motion on your own, or contact an attorney to help you file the motion.

Notifying the Friend of the Court or filing a motion does not allow you to move your child(ren). **You must obtain a court order approving the move.**

Enforcement of Judge's Verbal Ruling

Why won't the Friend of the Court enforce what the judge said in court, even if it's not in the written order?

The court speaks through its written orders. The Friend of the Court can only enforce the written order.

If you think a court order is different from what the judge said, tell the person who prepared the order and request a change. You must file a motion with the court to correct the order.

Property Settlement

Can the Friend of the Court enforce the property settlement provisions in my judgment of divorce?

No, the Friend of the Court has no power to enforce court property orders.

Access to Friend of the Court Records

Can I review the Friend of the Court file for my case?

Parties and their attorneys are entitled to information in their Friend of the Court records. There may be exceptions for certain confidential documents. See Michigan Court Rule 3.218.

The Friend of the Court may charge a reasonable fee for copying any records.

If the Friend of the Court denies you access to records regarding your case, you may file a motion with the court for an order of access.

Can other persons see my Friend of the Court file?

A party, a third-party custodian, a guardian, a guardian ad litem, counsel for a minor, a lawyer-guardian ad litem, or an attorney of record must be given access to Friend of the Court records other than confidential information. Michigan Court Rule 3.218(B).

Access to certain Friend of the Court records must also be given to a citizen advisory committee established under the Friend of the Court Act, protective services personnel, the prosecuting attorney and personnel from the Office of Child Support and the Department of Human Services, and state and federal auditors. Michigan Court Rule 3.218(C)–(F).

If denied access, a person may file a motion for an order of access with the judge assigned to the case or, if none, to the chief judge. Michigan Court Rule 3.218(G).

Access to Other Records

Can I access school, medical, and other records if my child lives with the other parent?

Michigan law gives both parents the right to see certain records or information about his or her child regardless of the custody arrangement. Included are medical, dental, school records, day care provider records, and notification of meetings regarding the child's education.

The Friend of the Court has no authority to enforce this law. You may wish to consult an attorney if you are denied this right.

Adoptions, Marriages, and Other Acts of Emancipation

What happens to my child support order and any support that may be owed if my minor child is adopted, marries, or enters the military service?

Upon entry of a court order, child support will stop when children are adopted, marry, or enter the military service. Copies of adoption orders, marriage records, or military service records should be provided to the court.

Any amounts owed must still be paid. Contact the Friend of the Court to arrange to pay or collect any money owed.

Parent Locator

What can the Friend of the Court do to find a missing parent?

The state and federal governments have a parent locating service which can be used to locate a parent:

- to collect child support;
- to decide or enforce a child custody or parenting time matter; or
- to enforce state or federal law with respect to the unlawful taking or restraint of a child.

To use the parent locator service, the following information is helpful:

- the full name, date of birth, and social security number of the missing parent; and
- the last known address of the missing parent.

Citizen Advisory Committees

What is the citizen advisory committee and what does it do?

Each county's board of commissioners or county executive may appoint a citizen advisory committee (CAC). A CAC advises the county board and chief judge about the duties and performance of the office of the Friend of the Court and the community's needs relating to office services.

A CAC may review any filed grievances which complain about Friend of the Court office operations. For more information on the CAC's role in grievances, see the following *Complaints* section below.

Who can serve on my county's citizen advisory committee?

The county board of commissioners or, where applicable, the county executive appoints public members of the CAC. To be appointed, a person must live in the applicable county. The county is to appoint a person from each of the following categories: an advocate for children, a representative of noncustodial parents, a representative of custodial parents, an attorney who engages primarily in family law practice, a mental health professional who provides family counseling, and two people who do not fit into any of those categories.

In addition, the CAC must include the county's sheriff, prosecutor, and county Department of Human Services director or their designees to also serve on the CAC.

Complaints

Friend of the Court

How do I file a complaint about the Friend of the Court?

The Friend of the Court Act provides a grievance procedure for complaints about Friend of the Court operations or employees. A grievance may not be used to change a Friend of the Court recommendation, or to challenge a referee's recommendation or a judge's decision.

You can file a grievance in two ways:

(1) File a grievance about office operations or employees with your Friend of the Court office by either:

- **(a)** Submitting a grievance form, which you can get from your local Friend of the Court office or on the web at courts.mi.gov; or
- **(b)** Writing a letter to the Friend of the Court clearly identifying your letter as a grievance.

  Within 30 days, the Friend of the Court must investigate and respond or issue a statement explaining why a response is not possible within that time.

  If you are not satisfied with the response of the Friend of the Court, you may file the same grievance with the chief circuit court judge.

(2) File a grievance about office operations with the citizen advisory committee (CAC).

- **(a)** Grievances filed with the CAC may only concern office operations. Since the committee's role is advisory only, it cannot decide the grievance.

  However, CAC can review, investigate, and hold hearings on the grievance, reporting its findings on the performance of the Friend of the Court to the chief judge and the county board of commissioners.

The Friend of the Court grievance procedure ends with the processes just described.

Court Order

How do I complain about a court order?

If you are represented, discuss your legal options with your attorney. Options include filing a motion for a rehearing or filing an appeal.

Orders are not changed under the grievance procedure or by complaints to other government agencies.

Judge or Referee

How do I file a complaint about the conduct of a judge or referee?

The Judicial Tenure Commission reviews complaints of misconduct by judges or referees.

Complaints concerning your court orders or referee recommendations should not be sent to the Judicial Tenure Commission. It cannot change the content of a court order or a referee's recommendation.

If you have a misconduct complaint, contact:

Judicial Tenure Commission
Cadillac Place, Suite 8-450
3034 W. Grand Blvd.
Detroit, MI 48202
(313) 875-5110
jtc.courts.mi.gov

Attorney

How do I file a complaint about my attorney?

The Attorney Grievance Commission investigates complaints of misconduct by Michigan attorneys.

If you have a complaint, contact:

Attorney Grievance Commission
Buhl Building, Suite 1700
535 Griswold
Detroit, MI 48226
(313) 961-6585
www.agcmi.com

Additional Resources

Federal Office of Child Support Enforcement
www.acf.hhs.gov/programs/css

Michigan Department of Human Services
www.michigan.gov/dhs

Michigan Legislature
www.legislature.mi.gov

Michigan State Disbursement Unit
www.misdu.com

A list of additional human service organizations may be available from your local Friend of the Court office.

Glossary of Frequently Used Terms

Adjournment—Postponing or putting off a case or session of court until another time or place.
Affidavit—A written statement of fact that is verified by oath or affirmation.
Alimony—See spousal support.
Arrearage—Money which is overdue and unpaid.
Bench Warrant—A court order for the arrest of a person, so that he or she may be brought before the court.
Chief Judge—In courts with two or more judges, one judge is selected as chief judge. The chief judge is the director of the administration of the court.
Department of Human Services (DHS)—The agency providing public assistance to families. Includes the Office of Child Support. Formerly known as the Michigan Department of Social Services and the Family Independence Agency.
Domestic Relations Action—Any action involving divorce, paternity, custody, parenting time, and support is considered a domestic relations action.
Domicile—The permanent home to which a person, when absent, always intends to return.
Evidence—Proof allowed at a hearing. Evidence may be presented through testimony of witnesses and by documents, records, and other material.
Family Division of Circuit Court—The division of the circuit court responsible for hearing cases about families and their children. The family division hears domestic relations matters, as well as juvenile matters formerly heard by the probate court.
Friend of the Court—(1) An office of the family division; investigates and makes recommendations to the court in domestic relations actions involving minor children and enforces orders of the court. (2) A person; the director of the office.
Hearsay—A statement made by a person who is not in court, which is repeated in court to prove a fact. Most hearsay evidence is not allowed as evidence in court.
Joint Custody—An order of the family division which provides: (1) Parents will share in major decisions affecting their child(ren) (joint legal custody); or (2) Child(ren) will live with one parent part of the time and the other parent part of the time (joint physical custody).
Jurisdiction—The power of the court to decide cases before it. This power depends on the type of case and how closely connected the parties are to the county where the court is located.
Michigan State Disbursement Unit (MiSDU)—A state office which collects and distributes support payments in accordance with the court's orders.
Motion—A formal request made in writing to the court. A motion is sometimes called a petition.
Order—A decision of the court made in writing.
Party—A person legally involved in a particular action.
Payee—The person, or agency, to whom support is sent. Also known as recipient.
Payer—The person who is ordered to pay support. Also known as an obligor.
Petition—See motion.
Pleadings—Papers filed by a party in a lawsuit stating claims against the other party, or the other party's defenses to those claims.
Public Service Announcement (PSA)—As used in this handbook, these are brochures available to the public.
Reconciliation—When parties to a domestic relations action are attempting to work out their differences and remain as a family unit.
Show Cause Hearing—A court hearing which is held so that a person can present reasons why he or she should not be considered in violation of a specific court order. Also known as a "Contempt of Court" hearing.
Spousal Support—Money ordered to be paid permanently or for a specified period of time to support a spouse or former spouse.
Statute of Limitations—In civil matters, the time limit on the right to seek relief in court for damages.
Temporary Assistance for Needy Families (TANF)—Replaced Aid to Families with Dependent Children (AFDC or ADC). In Michigan, known as the Financial Independence Program (FIP).
Testimony—The statement of a witness under oath which is given as evidence.
Transcript—A word-for-word record of proceedings at a hearing.
Waive—To give up a right, claim, or privilege.
Witness—One who testifies to what (s)he has seen, heard, or otherwise observed.

The information in this publication is available, upon request, in an alternative, accessible format.

For more information regarding the Michigan Legislature,
scan this QR code with your smartphone.